

### REMARKS

Claims 37, 38, 40-43, 45-55, 58, 59, 61, 65-69, 82 and 83 are pending in the application. Claims 59 and 61 are objected to, but would be allowable if rewritten to overcome objections under 35 USC § 112, 2<sup>nd</sup> paragraph.

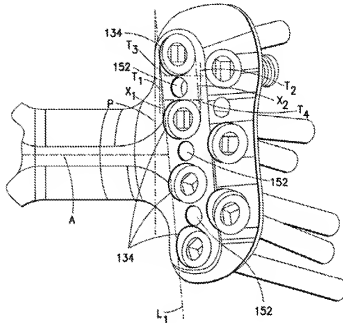
Claims 82 and 83 have been canceled without prejudice, as discussed in more detail below.

Claims 37-38, 40-59 and 61 stand rejected under 35 USC § 112, 2<sup>nd</sup> paragraph for various reasons. Each of the objections has been addressed by an appropriate amendment in claims 37, 40-43, 45, 48, 59 and 69 to overcome the rejections, and it is respectfully requested that the rejections of the claims on this ground be withdrawn.

Claims 37-38, 40-43, 45-46, 48-51, 53-55, 58 and 65-69 stand rejected under 35 USC § 102(e) as anticipated by US Pub. No. 2004/0030339 to Wack ('Wack'). Claim 47 stands rejected under 35 USC 103(a) as unpatentable over Wack. Independent claims 37, 48 and 65 have been amended to claim the same definition of the boundary for the alignment hole as was present in now canceled claims 82 and 83. The applicant respectfully traverses the rejections, as Wack fails to teach or suggest the presently claimed invention.

In view of amendment, the claims require that the alignment be located entirely within the following boundary: a line joining a proximalmost point on a circumference of

each of said two immediately adjacent peg holes, a line joining a distalmost point on a circumference of each of said two immediately adjacent peg holes, a tangent to a lateralmost point on a circumference of a medialmost of said two immediately adjacent peg holes, and a tangent to a medialmost point on a circumference of a lateralmost of said two immediately adjacent peg holes of said first set of peg holes. See boundary defined by lines  $X_1$ ,  $X_2$ ,  $T_3$ , and  $T_4$  in Fig. 3A, below.



**FIG.3A**

In distinction, as shown in the marked-up portion of Fig. 19 from Wack (below)(a mark-up of the same figure used by the Examiner), the smaller so-called “alignment holes” in the plate are not located entirely within the defined boundary, nor is there any suggestion to position such holes within a boundary as defined. It is noted that the small opening at the distal end of screw holes in plate 844 and the proximal ends of screw holes in plate

944 are not features of the screw holes, but are rather “K-wire holes 871” adjacent the screw holes, as specifically identified in Wack with respect to Fig. 22. (See ¶0139) Such K-wire holes are not within the identified boundary.

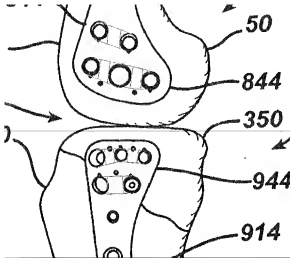


Fig. 19 (Wack)

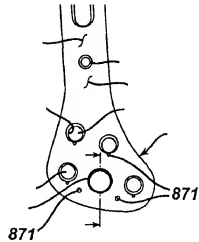


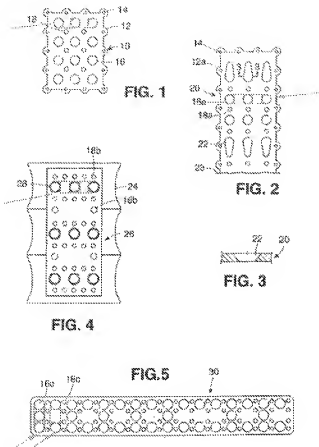
Fig. 22 (Wack)

For the foregoing reasons, it is submitted that the claims are allowable over Wack (and any other references cited in combination therewith) and it is respectfully requested that the rejection be withdrawn.

Claims 37-38, 40-41, 45-48, 51 and 53-55 stand rejected under 35 USC § 103(a) as unpatentable over US Pat. No. 6,623,486 to Weaver (‘Weaver’) in view of US Pat. No. 5,527,311 to Procter (‘Procter’). Claims 52 and 65-69 stand rejected under 35 USC § 103(a) as unpatentable over Weaver in view of Procter and additional references. The applicant respectfully traverses the rejection, as the combination of Weaver in view of Procter fails to teach or suggest limitations of the presently claimed invention. In

reviewing the claims, the claims have also been amended to clarify the orientation of proximal-distal and medial-lateral directions of the plate relative to the longitudinal axis of the bone.

Weaver shows holes with a relatively smaller diameter than the peg holes. Such holes are located at the ends of the plate, presumably for fixation of suture. As noted by the Examiner, the smaller holes are not located within the claimed boundary. Procter provides a plate for vertebral implantation, with the length of the plate oriented to cover portions of two or more vertebrae. The Procter plate is provided with rows of larger holes 16 for receiving screws (with the distance between the rows corresponding to the distance between adjacent vertebra; col. 3, lines 29-31) and smaller circular holes 18 for selectively reducing the stiffness of the plate so that the plate may be shaped off the spine and positioned against the spine for a better anatomical fit. None of the smaller circular holes 18 are provided within the claimed boundary between the screw holes in a medial-lateral direction (when the plate is oriented for placement on the spine). More particularly, with reference to the marked-up Figure Sheet of Procter, below, Fig. 1 shows all holes 18 outside a boundary marked relative to holes 16 according to the claimed definition; Fig. 2 shows all holes 18a outside a boundary marked relative to holes 16a according to the claimed definition; Fig. 4 shows all holes 18b outside a boundary marked relative to holes 16b (with screw 28 placed therein) according to the claimed definition; and Fig. 5 (with plate oriented on the page transverse to the other plates) shows all holes 18c outside two different boundaries marked relative to holes 16c according to the claimed definition.



## Marked-Up Figure Sheet of Procter

Further, given the purpose of the small circular holes 18 in Procter, i.e. to reduce plate stiffness for bending, there is no teaching or suggestion (i) to place such holes between the screw holes as such would subject the screw holes to deformation, or (ii) to provide the plurality of K-wires as required per the limitation of claims 65-69.

For the foregoing reasons, it is submitted that the claims are allowable over Weaver in view of Procter (and any other references cited in combination therewith).

In light of the above, it is submitted that the claims are in condition for allowance. Should any issues remain outstanding, the Examiner is invited to call the undersigned attorney of record so that the case may proceed expeditiously to allowance.

Respectfully submitted,

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